

ORDINANCE NO. 2021-003

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GREY FOREST, TEXAS AMENDING THE GREY FOREST CODE OF ORDINANCES BY ADOPTING CHAPTER 16 STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES FOR THE PURPOSE OF RIGHT-OF-WAY MANAGEMENT FOR WIRELESS NETWORK

WHEREAS, the City of Grey Forest, Texas (the "City") acknowledges that the State of Texas has delegated to the City the fiduciary duty to manage the public right-of-way for the health, safety, and welfare of the public; and

WHEREAS, Chapter 284 of the Texas Local Government Code ("the Code") allows certain wireless network providers to install in City public rights-of-way wireless facilities, described and defined in Section 284.002 of the Code as "Micro Network Nodes," "Network Nodes," and "Node Support Poles;" and

WHEREAS, the City Council desires to regulate the installation of Network Nodes and Network Support Poles, pursuant to Chapter 284 of the Code, in a way that is fair, reasonable, and nondiscriminatory.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GREY FOREST, TEXAS that the City's Code of Ordinances is amended by creating and adopting the following chapter and provisions:

CHAPTER 16 STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES

Article 16.01 – General Provisions.

[Reserved]

Article 16.02 – Use of Public Rights-of-Way

Division 1. Generally

[Secs. 16.02.001 – 16.03.030 Reserved]

Division 2. Right-of-Way Management for Wireless Network Providers

Sec. 16.02.031 – Purpose

- (A) **Purpose:** The purpose of this Article is to establish policies and procedures for the placement of node support poles in the public rights-of-way and network nodes in the public rights-of-way and on service poles within the City's jurisdiction, which will provide public benefits and preserve the integrity, safe usage, and visual qualities of the City's public rights-of-way and the City as a whole.
- (B) **Intent:** In enacting this Article, the City is establishing uniform standards to address issues presented by network nodes, including, without limitation, ensuring that network nodes and node support poles do not adversely affect:

- (1) use of streets, sidewalks, alleys, parkways and other public ways and places;
- (2) vehicular and pedestrian traffic;
- (3) the operation of facilities lawfully located in public rights-of-way or public property;
- (4) the ability of the City to protect the environment, including the prevention of damage to trees;
- (5) the character of residential and historic areas and City parks; and
- (6) the rapid deployment of network nodes to provide the benefits of wireless services.

(C) **Conflicts with Other Articles:** This Article supersedes all Articles or parts of Articles or other rules adopted prior hereto that are in conflict herewith.

(D) **Governing Law:** This Article shall be construed in accordance with Chapter 284 of the Texas Local Government Code to the extent that it is not in conflict with the Constitution and laws of the United States or of the State of Texas.

Sec. 16.02.032 – Definitions

The following definitions apply for purposes of this Division only.

Applicable codes mean:

- (A) the City uniform building, fire, electrical, plumbing, and/or mechanical codes adopted by a recognized national code organization; and
- (B) local amendments to those codes to the extent not inconsistent with Chapter 284.

Application means a request submitted by a Network Provider (i) for a permit to locate and/or collocate network nodes; or (ii) to install a transport facility; or (iii) to approve the installation, replacement, or modification of a pole.

Collocate and *collocation* means the installation, mounting, maintenance, modification, operation, and/or replacement of Network Nodes on a pole in the public rights-of-way.

Decorative pole means a streetlight pole specially-designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than specially-designed informational or directional signage or temporary holiday or special event attachments, have been placed or are permitted to be placed according to nondiscriminatory City codes and ordinances.

Easement means and shall include any public easement or other compatible use created by dedication or by other means to the City for public utility or any other purpose whatsoever. The term "easement" shall include a private easement used for the provision of utilities.

Federal Communications Commission or *FCC* means the Federal administrative agency, or lawful successor, authorized to oversee cable television and other multi-channel regulations on a national level.

Micro network node means a Network Node that is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, not longer than 11 inches.

Network node means equipment at a fixed location that enables wireless communications between user equipment and communications' networks. The term:

- (A) includes:

- (i) equipment associated with wireless communications;
 - (ii) a radio transceiver, an antenna, a battery-only backup power supply, and comparable equipment, regardless of technological configuration; and
 - (iii) coaxial or fiber-optic cable that is immediately adjacent to and directly associated with a particular collocation; but
- (B) does not include:
- (i) an electric generator;
 - (ii) a pole; or
 - (iii) a macro tower.

Network provider means:

- (A) a wireless service provider; or
- (B) an entity that does not provide wireless services and that is not an electric utility, but builds or installs on behalf of a wireless service provider:
 - (i) Network Nodes;
 - (ii) Node Support Poles; or
 - (iii) any other structure that supports or is capable of supporting a network node.

Node support pole means a pole installed by a network provider for the primary purpose of supporting a Network Node.

Permit means written authorization for the use of a public right-of-way or collocation on a service pole required from the City before a network provider may perform any action or initiate, continue, or complete a project over which the Municipality has police power authority.

Pole means a service pole, City-owned utility pole, node support pole, or utility pole.

Private easement means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

Provider has the same meaning as "Network Provider."

Routine maintenance means (i) work in the public right-of-way that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; (ii) replacing or upgrading an existing Network Node pole with a node, or a pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in a public right-of-way; or (iii) the installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in the public right-of-way.

Service pole means a pole, other than a City-owned utility pole, owned or operated by the City and located in a public right-of-way, including:

- (A) a pole that supports traffic control functions;
- (B) a structure for signage;
- (C) a pole that supports lighting, other than a Decorative Pole; and
- (D) a pole or similar structure owned or operated by the Municipality and supporting only Network Nodes.

Technical grounds mean, in light of prevailing industry and engineering standards, reasons for insufficiency of capacity, safety, reliability, and/or generally-acceptable engineering purposes, consistent with applicable law and City Code.

Transport facility means each transmission path physically located within a public right-of-way, extending with a physical line from a Network Node directly to the network for the purpose of providing backhaul to Network Nodes.

User means a person or entity conducting business over facilities occupying, in whole or in part, a public street or right-of-way.

Utility pole means a pole that provides:

- (A) electric distribution with a voltage rating of not more than 34.5 kilovolts; or
- (B) services of a telecommunications provider, as defined by Chapter 284, Section 51.002, Utilities Code.

Wireless service means any service using a licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using a Network Node.

Wireless service provider means a person or entity that provides wireless service to the public.

Wireless facilities mean "Micro Network Nodes," "Network Nodes," and "Node Support Poles," as defined in Texas Local Government Code, Chapter 284.

Sec. 16.02.033 – Use and Occupancy of Rights-of-Way

Pursuant to this Article a wireless Network Provider has the non-exclusive right to use and occupy public rights-of-way in the City for the purpose of constructing, maintaining, and operating its facilities used in the provision of Wireless service. The terms of this Article shall apply to all wireless Network Providers' facilities used, in whole or in part, in the provision of wireless services throughout the City, including any annexed areas upon the effective date of the annexation or the date the City provides the company written notice, whichever date occurs first.

Sec. 16.02.034 – Compliance with Adopted Policies and Applicable Codes

All wireless Network Providers shall comply with the terms of this Article, City applicable codes, and the terms and conditions of the City's design policies, if adopted.

Sec. 16.02.035 – General Construction and Maintenance Requirements

A Network Provider shall construct and maintain Network Nodes and Network Support Poles in a manner that does not:

- (A) Obstruct, impede, or hinder the usual travel or public safety with public rights-of-way;
- (B) Obstruct the legal use of public rights-of-way by other utility providers;
- (C) Violate non-discriminatory Applicable Codes;
- (D) Violate or conflict with the City's publicly-disclosed public right-of-way design specifications; or
- (E) Violate the Federal Americans with Disabilities Act of 1990 (ADA).

Sec. 16.02.036 – Permit Applications

- (A) Except as otherwise provided in Chapter 284 of the Texas Local Government Code, a Network Provider shall obtain a permit or permits from the City to install a Network Node, Node Support Pole, or Transport Facility in City public rights-of-way.

- (B) The City shall not require a Network Provider to perform services for the City for which the permit is sought in a manner inconsistent with Chapter 284.
- (C) A Network Provider that wants to install or collocate multiple Network Nodes inside the municipal limits of the City is entitled to file a consolidated permit application with the City for not more than 30 Network Nodes and, upon payment of the applicable fee(s), receive a permit or permits for the installation or collocation of those Network Nodes.
- (D) All permit applications shall be filed on the *Site Application for the Installation of Network Nodes and Node Support Poles* (the "Application") provided by the City. The Applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly. The permit application shall be made by the Network Provider or its duly authorized representative and shall contain the following:
- (1) The Applicant's name, address, telephone number, and e-mail address;
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the application;
 - (3) Applicable construction and engineering drawings and information to confirm that the applicant will comply with the City's design policies, if adopted and Applicable Codes;
 - (4) Any additional information reasonably related to the Network Provider's use of the public rights-of-way to ensure compliance with the City's design policies, if adopted and this Article;
 - (5) A certificate that the Network Node(s) complies with applicable regulations of the Federal Communications Commission, and certification that the proposed Network Node(s) will be placed into active commercial service by or for the Network Provider not later than the 60th day after the date of construction and final testing of each Network Node is completed; and
 - (6) A certificate of insurance indicating that the Network Provider and its contractor have, at a minimum, \$1,000,000.00 in general liability coverage.
- (E) **Exception:** A Network Provider is not required to apply, obtain a permit, or pay a rate to the City for:
- (1) Routine maintenance that does not require excavation in or closing of sidewalks or vehicular lanes in public rights-of-way;
 - (2) Replacing or upgrading a Network Node or Network Pole with a node or pole that is substantially similar in size or smaller and that does not require excavation or closing of sidewalks or vehicular lanes in public rights-of-way;
 - (3) The installation, placement, maintenance, operation, or replacement of Micro Network Nodes that are strung on cables between existing poles or Node Support Poles in compliance with the National Electrical Safety Code.
- (F) Notwithstanding Subparagraph (E) above, the Network Providers or their contractors shall notify the City at least 24 hours in advance of work described in Subparagraph (E).
- (G) Any amendment to information contained in a permit application shall be submitted in writing to the City within 30 days after the change necessitating the amendment.

Sec. 16.02.037 – General Compliance

- (A) **Height:** Collocation of permitted use Network Nodes in the public rights-of-way shall be subject to a 55-foot maximum height. A network provider seeking to construct, replace, or

modify a pole or node in the public right-of-way that exceeds the height or size limits shall be subject to applicable zoning requirements.

(B) **Grade:** Equipment must, at a minimum, be 8-feet above grade.

(C) **Undergrounding:** A Network Provider shall comply with non-discriminatory undergrounding requirements, municipal ordinances zoning regulations, State Law, private deed restrictions, and/or other public or private restrictions that prohibit installing aboveground structures in a public right-of-way without first obtaining zoning or land use approval. This requirement or restriction shall not be interpreted to prohibit a Network Provider from replacing existing structures.

Sec. 16.02.038 – Additional Restrictions for Installations in Historic Districts, Municipal Parks, and Residential Areas

(A) **Historic Districts and Districts Designated as Grey Moss Inn Uses:** Subject to the permit application approval time frames in this chapter, a Network Provider must obtain in advance written approval from the City before collocating new Network Nodes or installing new Node Support Poles in any area zoned or designated as a Historic District, in an area designed for the Grey Moss Inn use, or if the district has decorative poles. Such installations shall be subject to the design and aesthetic standards of such areas.

(B) **Parks, Natural Areas and Residential Areas:** A Network Provider may not install a new Node Support Pole in public rights-of-way without the City's discretionary, non-discriminatory written consent if the public rights-of-way are located in a Municipal park, natural area or are adjacent to a street that is 1) not more than 50 feet wide and 2) adjacent to single-family residential lots, other multifamily residences, or undeveloped land that is designated for residential use by zoning or deed restrictions. A Network Provider shall comply with private deed restrictions and other private restrictions when installing Network Nodes in parks and residential areas.

Sec. 16.02.039 – Municipal Review Process

(A) **Determination of Application Completeness:** The City shall determine whether the permit application is complete and notify the applicant of that determination:

- (1) *For Network Nodes and Node Support Poles:* No later than 30 calendar days after the date the City receives the permit application; and
- (2) *For a Transport Facility:* No later than 10 calendar days after the date the City receives the permit application.

(B) **Approval or Denial of Application:** The City shall approve or deny a completed application:

- (1) *For Network Nodes:* No later than 60 calendar days after the date the City verifies the complete application;
- (2) *For Network Support Poles:* No later than 150 calendar days after the date the City verifies the complete application; and
- (3) *For Transport Facilities:* No later than 21 calendar days after the City verifies the complete application.

(C) **Basis for Denial of Application:** If a completed application is denied by the City, it shall document the basis for the denial, including the applicable City code provisions, other City rules and regulations, or other law on which the denial is based. The basis for the denial must

be sent by certified mail or electronic mail to the applicant at the address designated on the applications.

(D) **Resubmission of Denied Application:** The applicant may cure the deficiencies identified in the denied application in the following manner:

- (1) The applicant has 30 calendar days from the date the City denies the completed application to cure the deficiencies identified in the denial documentation without paying an additional application fee, other than any fee for actual costs incurred by the City; and
- (2) The City shall approve or deny the revised completed application which has been submitted after a denial and shall do so not later than the 90th calendar day after the City receives the revised completed application.

Sec. 16.02.040 – Application Fees and Rental Rates to the City

(A) As compensation for the Network Provider's use and occupancy of the City public rights-of-way, the Network Provider shall pay application fees and annual public right-of-way rental rates set forth below, which shall be in lieu of any lawful tax, license, charge, right-of-way permit, use, construction, street-cut, inspection fee, or other right-of-way related charge or fee, whether charged to the Network Provider or its contractor(s) within the City, except general ad valorem taxes, special assessments, and sales tax levied in accordance with State Law and equally applicable to all businesses located within the City.

(B) **Network Nodes:**

- (1) **Application Fee:** The application fee shall be \$500.00 for up to five (5) Network Nodes and \$250.00 for each additional node.
- (2) **Annual Public Right-of-Way Rate Fee:** The annual public right-of-way rate shall be \$250.00 per Network Node installed in the City public rights-of-way.
- (3) **Public Right-of-Way Rate Adjustment:** As provided in Section 284.054 of the Code, the City may adjust the amount of the annual public right-of-way rate fee not more than annually by an amount equal to one-half the annual change, if any, in the Consumer Price Index (CPI). The City shall provide written notice to each Network Provider of the new rate, and the rate shall apply to the first payment due to the City on or after the 60th calendar day following the written notice.

(C) **Node Support Poles:** The application fee shall be \$1000.00 per service pole.

(D) **Transport Facilities:**

- (1) The application fee shall be \$100.00 for each Transport Facility.
- (2) The annual Transport Facility rental rate shall be \$28.00 monthly for each Network Node site located in public rights-of-way; however, no fee is required to be paid to the City if the Network Provider is already paying the City an amount equal to or greater than the amount of other City right-of-way fees for access lines under Chapter 283 of the Code or cable franchise fees under Chapter 66 of the Texas Utility Code.

(E) **Micro Network Nodes:**

- (1) No application fee is required for a Micro Network Node if the installation of the node includes attachment on lines between poles or between node support poles.

(F) **Collocation of Network Nodes on Service Poles**

- (1) Subject to the City's *Service Pole Collocation Attachment Agreement*, the collocation of each Network Node on a City service pole shall be charged a rate of \$20.00 per year per service pole.

(G) City-Owned Municipal Utility Poles:

- (1) A Network Provider shall pay an annual fee of \$20.00 per service pole, plus, an annual pole attachment rate, applied on a per foot basis, for the collocation of a Network Node supported by or installed on a City-owned utility pole. The annual pole attachment rate shall be consistent with Section 54.024 of the Texas Utilities Code.
- (H) The City shall not seek or accept in-kind services in lieu of or as additional payment or consideration from any user of public rights-of-way for the use of public rights-of-way.

Sec. 16.02.041 – Effect of Permit

- (A) Authority Granted: A permit from the City authorizes an applicant to undertake only those activities specified in this Article and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in public rights-of-way.
- (B) Time of Installation: A Network Provider shall begin the installation for which a permit is granted not later than six months after final approval and shall diligently pursue the installation to completion; provided, however, the City may place longer time limits on completion or grant reasonable extensions of time, as requested by the Network Provider.
- (C) Right to Occupy: Once a Network Provider has collocated a Network Node or placed a Node Support Pole in public rights-of-way pursuant to a permit, the provider shall be permitted to continue to maintain such collocation and/or pole, unless required to remove or relocate the facility under the terms of this Article.

Sec. 16.02.042 – Emergency Removal or Relocation and Abandonment

- (A) Notice: Within 90 calendar days written notice from the City, a Network Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change, or alter the position of any Network Node or Node Support Pole within public rights-of-way whenever the City has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any City activity or improvement in or upon public rights-of-way.
- (B) Emergency Removal or Relocation of Facilities: The City retains the right and privilege to disconnect and/or move any Network Node located within public rights-of-way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the Network Provider and allow the Network Provider an opportunity to move its own facilities prior to the City disconnecting or removing a facility. The City shall notify the Network Provider after disconnecting or removing any Network Node or Node Support Pole.
- (C) Abandonment of Facilities: Upon abandonment of a Network Node or Node Support Pole within public rights-of-way, the Network Provider shall notify the City of the same within 90 calendar days. Following receipt of such notice, the City may direct the Network Provider to remove all or any portion of a Network Node or Node Support Pole if the City, or any of its

departments, determines, subject to City Code, that such removal is necessary to protect public health, safety, and welfare.

Sec. 16.02.043 – Indemnity

As provided in Section 284.302 of the Code, a wireless Network Provider shall indemnify, defend, and hold the City harmless from and against all liability, damages, cost, and expense, including reasonable attorney's fees, arising from injury to person or property proximately caused by the negligent act or omission of the Network Provider. The City shall promptly notify the Network Provider of any claims, demands, or actions (the "claims") covered by this indemnity, after which the Network Provider shall defend the claims. The foregoing indemnity obligations shall not apply to claims arising solely from the negligence of City; however, they shall apply in the case of all claims which arise from the alleged joint negligence of the Network Provider and the City, provided that, in such cases, the amount of the claims for which the City shall be entitled to indemnification shall be limited to that portion attributable to the Network Provider. Nothing in this Section shall be construed as waiving any governmental immunity available to the City under state law or waiving any defenses of the parties.

Sec. 16.02.044 – Effect on Other Utilities and Telecommunication Providers

Nothing in this Article shall govern the attachment of Network Nodes on poles and other structures owned or operated by investor-owned electric utilities, electric cooperatives, telephone cooperatives, Grey Forest Utilities, or telecommunication providers.

THESE AMENDMENTS ARE TO BE CONSTRUED CONSISTENT WITH CHAPTER 1 OF THE GREY FOREST CODE OF ORDINANCES.

II. CUMULATIVE CLAUSE.

That this Ordinance shall be cumulative of all provisions of the City of Grey Forest except where the provisions of this Ordinance are in direct conflict with the provisions of such Ordinance, in which event the conflicting provisions of such Ordinance are hereby repealed.

III. SEVERABILITY

That it is hereby declared to be the intent of the City Council of the City of Grey Forest that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, or section of this Ordinance should be declared unconstitutional by the valid judgement or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of the Ordinances, since the same would have been enacted by the City Council without incorporation in this ordinance of any such unconstitutional phrases, sentences, paragraphs, or sections.

IV. PROPER NOTICE AND MEETING

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**V.
EFFECTIVE DATE**

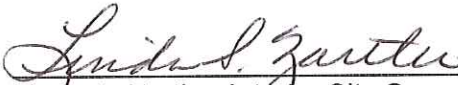
This ordinance shall be effective upon passage and publication as required by state and local law. **Passed** by the City Council of the City of Grey Forest this the 26 day of February 2021.

APPROVED:



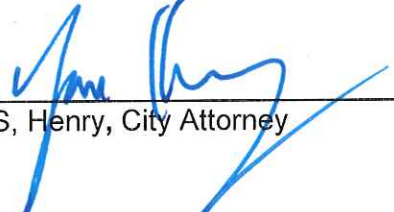
Charles Mitchell Thornton, Mayor

Attest:



Linda S. Zartler, Interim City Secretary

Approved as to Form:



Ryan S. Henry, City Attorney